

CHAPTER 50-11.3
CRIMINAL HISTORY RECORD INVESTIGATION

50-11.3-01. Criminal history record investigation required.

1. Before appointment as a legal guardian under chapter 27-20, the individual must be subject to an assessment that includes the result of a criminal history record investigation made under this section.
2. Except as provided in subsection 6, an individual described in subsection 1 shall secure, from a law enforcement agency or other agency authorized to take fingerprints, two sets of fingerprints and shall provide all other information necessary to secure state criminal history record information and a nationwide background check under federal law. Upon a request made under this section, a law enforcement agency shall take fingerprints of any individual described in subsection 1 and may charge a reasonable fee to offset the cost of fingerprinting.
3. An individual described in subsection 1 shall assure that information obtained under subsection 2 is provided to the department of human services.
4. Upon receipt of all fingerprints and necessary information relating to a criminal history record investigation, the department of human services shall submit those fingerprints and that information to the bureau of criminal investigation.
5. The bureau of criminal investigation shall request a nationwide background check from the federal bureau of investigation and, upon receipt of a response, provide the response of the federal bureau of investigation to the department of human services. The bureau of criminal investigation shall also provide any criminal history record information that may lawfully be made available under chapter 12-60 to the department of human services. The bureau of criminal investigation may charge a reasonable fee to offset the cost of providing any criminal history record information and may require payment of any charge imposed by the federal bureau of criminal investigation for a nationwide background check.
6. Fingerprints need not be taken and a nationwide background check need not be made if an individual:
 - a. Has resided continuously in this state for eleven years or since reaching age eighteen, whichever is less;
 - b. Is on active United States military duty or has resided continuously in this state since receiving an honorable discharge; or
 - c. Is excused from providing fingerprints under rules adopted by the department of human services.
7. The department of human services shall provide an individual, who provided the department with information under subsection 2, with any information received under this section from the bureau of criminal investigation which the department of human services is not prevented by federal law from disclosing to the individual.
8. The department of human services may adopt emergency rules under this section without the finding otherwise required under section 28-32-02.

50-11.3-02. Criminal history record investigation - Effect of results. An individual may not be licensed or approved as a foster parent or treated as having a home suitable for the adoption of any child other than the individual's stepchild and a foster care facility that employs or

houses an individual may not be licensed or approved, if the individual is the subject of a criminal history record investigation that reveals:

1. A felony conviction by a court of competent jurisdiction for criminal conduct involving:
 - a. Child abuse or neglect;
 - b. Domestic violence, as that term is used in chapter 14-07.1;
 - c. A crime in which a child was a victim, including the creation or distribution of child pornography; or
 - d. A crime involving violence, including rape, sexual assault, or murder, but not including other physical assault or battery;
2. A felony conviction entered within the past five years by a court of competent jurisdiction for criminal conduct involving:
 - a. A crime involving violence not described in subsection 1;
 - b. Any drug-related offense; or
 - c. An attempt, facilitation, solicitation, or conspiracy to commit criminal conduct described in subsection 1;
3. A felony conviction entered by a court of competent jurisdiction for criminal conduct described in subsection 2 if five years have not elapsed after final discharge or release from any term of probation, parole, or other form of community corrections, without subsequent conviction, unless the individual demonstrates sufficient rehabilitation; or
4. A felony conviction entered by a court of competent jurisdiction for criminal conduct described in subsection 2 or a misdemeanor conviction by a court of competent jurisdiction for a crime in which a child was the victim or a crime of violence if the individual is not sufficiently rehabilitated.